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CC Docket No. 01-92

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of US LEC Corp.	)	CC Docket No. 01-92
for Declaratory Ruling	)	
Regarding LEC Access Charges	)	
for CMRS Traffic	)	
	)	

**REPLY COMMENTS OF McLEODUSA TELECOMMUNICATIONS SERVICES, INC.,  
FOCAL COMMUNICATIONS CORPORATION, AND CAVALIER TELEPHONE  
ON PETITION FOR DECLARATORY RULING OF US LEC CORP.**

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Focal Communications Corporation ("Focal") and Cavalier Telephone ("Cavalier"), by their undersigned counsel, hereby reply to the comments filed in the above-captioned matter on October 18, 2002. McLeodUSA, Focal and Cavalier (collectively "Joint Commenters") submitted comments on October 18, 2002 in support of the Petition of US LEC Corp. ("US LEC") for Declaratory Ruling

The comments in this proceeding support grant of the relief requested in US LEC's Petition ("Petition"). The access charge regime should apply to commercial mobile radio service ("CMRS") traffic carried by all local exchange carriers ("LECs"), including both incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs").

The initial joint comments of McLeodUSA, Focal and Cavalier urged the Commission to grant the relief requested by US LEC in its Petition, by expeditiously issuing a ruling reaffirming that all LECs (including CLECs and ILECs) are entitled to recover access charges for CMRS traffic passed to interexchange carriers ("IXCs").

**I. THE COMMENTS SUPPORT ACCESS CHARGE PAYMENTS TO LECs (CLEC AND ILEC) FOR CMRS TRAFFIC**

Commenters from a broad spectrum of industry interests support a Commission ruling reaffirming the payment of access charges by IXCs when a LEC (whether CLEC or ILEC) connects traffic from a CMRS carrier with the facilities of an IXC. SBC points out that the Commission announced in the *Local Competition Order* that the access charge regime would continue to apply to interexchange ("IXC") traffic, and that in instances where CMRS traffic, routed via the LEC, is carried by an IXC, such traffic is subject to interstate access charges.<sup>1</sup> SBC requests that the Commission affirm that IXCs must pay LECs access charges for wireless traffic.

The Comments of ICORE, Inc. ("ICORE"), on behalf of many rural incumbent local exchange companies, explains that "US LEC asks only for a reaffirmation of the Commission's own rules."<sup>2</sup> ICORE states "For the Commission to do anything less would constitute a major change in its fundamental policies and rules."<sup>3</sup>

Similarly, the Comments of Fred Williamson and Associates, Inc. ("FWA"), on behalf of several ILECs in Kansas and Oklahoma, support grant of the Petition, agreeing that "if an IXC uses LEC (either ILEC or CLEC) facilities to originate, transport or terminate the IXC's call, then the IXC is required, based on FCC and State rules and based upon applicable access charge tariffs, to pay the LEC for use of those facilities."<sup>4</sup>

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<sup>1</sup> Comments of SBC Communications, Inc., filed October 18, 2002, at 6, citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96098, 95-185, *First Report and Order*, 11 FCC Red 15499, at pp. 1043, 1033. (1996), ("Local Competition Order").

<sup>2</sup> Comments of ICORE, Inc., filed October 18, 2002, at 3.

<sup>3</sup> *Id.*

<sup>4</sup> Comments of Fred Williamson and Associates, Inc., filed October 18, 2002, at 4.

OPASTCO also agrees that “the Commission should clarify its rules by affirming that LECs are entitled to recover access charges from IXC for the provision of access service on all interexchange calls originating from, or terminating on, the networks of CMRS providers.”

Warrinner, Gesinger & Associates, LLC (“WGA”), an accounting firm providing consulting services primarily to rural LECs, believes that “appropriate access charges should be applied to all originating and terminating traffic exchanged between a LEC and an IXC in accordance with designated LEC access tariffs.”<sup>6</sup>

The Minnesota Independent Coalition (“Coalition”) also agrees that the respective obligations of an originating or terminating LEC and the IXC should not change because the network at the other end of a long distance call is a CMRS network rather than a LEC network.<sup>7</sup> The Coalition also points out “long distance traffic remains subject to the access charge regime, and states “There is no indication that the IXCs should be allowed to avoid payment of access charges to LECs for access service provided in connection with long distance traffic that is connected to the CMRS network at the other end of the call.”<sup>8</sup>

The National Telecommunications Cooperative Association urges the Commission to grant the US LEC Petition, stating that CLECs are local telephone companies entitled to access charges for connecting CMRS providers and IXCs.<sup>9</sup>

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<sup>6</sup> Comments of the Organization for the Protection and Advancement of Small Telecommunications Companies (“OPASTCO”), filed October 18, 2002, at 8.

<sup>7</sup> Comments of Warrinner, Gesinger & Associates, LLC, filed October 18, 2002 at 1.

<sup>8</sup> Initial Comments of the Minnesota Independent Coalition, filed October 18, 2002, at 2.

<sup>9</sup> *Id.* at 3.

Comments of the National Telecommunications Cooperative Association, filed October 18, 2002, at 10.

The Alliance of Incumbent Rural Independent Telephone Companies also supports grant of the US LEC Petition, and advises "It is disingenuous for any IXC to feign confusion regarding the law and the Commission's rules in an attempt to avoid its access payment obligations."" However, confusion, whether feigned *or* real, does exist, and several parties have taken the opportunity in this proceeding to argue additional issues presented in other proceedings. **As** discussed below, resolution of this matter is not dependent on resolution of other disputes discussed, and disputes about factual matters can be handled in separate complaint proceedings. An expeditious ruling is necessary to remove any remaining confusion.

## **II. EXISTING RULES SUPPORT PROVISION OF ACCESS BY MULTIPLE PROVIDERS**

Sprint "agrees as a general matter . . . that providers of access service should be compensated for use of their networks, regardless of whether they are ILECs, CLECs or wireless carriers."<sup>11</sup> Sprint points to many instances in the industry where switched access can be provided by multiple providers.<sup>12</sup>

For example, the Commission recognized, beginning in the 1980s and continuing through the present, that it is common industry practice for smaller, LECs and larger ILECs to establish connections to provide originating and terminating access for IXCs." Often IXCs did not have a point of presence in the service territory of smaller LECs, and thus, could not interconnect directly with every LEC. Thus, to route IXC-bound calls, LECs would connect

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<sup>10</sup> Comments of the Alliance of Incumbent Rural Independent Telephone Companies, filed October 18, 2002, at 3.

<sup>11</sup> Sprint Comments, filed October 18, 2002, at 2.

<sup>12</sup> *Id.* at 3-5; See also Comments of Verizon Wireless at 11-14.

<sup>13</sup> See, e.g., *Waiver of Access Billing Requirements and Investigation of Permanent Modifications*, Memorandum Opinion and Order, CC Dkt. No. 86-104, 2 FCC Rcd 4518 (1987); *Access Billing Requirements Reconsideration Order*, 3 FCC Rcd 13 (1987); *800 Database Access Tariffs*, 11 FCC Rcd 15227 (1996); *Elkhart Telephone v. Southwestern Bell*, 11 FCC Rcd 1051 (1995).

facilities at an established "meet-point." and then jointly or separately bill the IXC for access services

Verizon Wireless also points to instances where access services are jointly provided.<sup>14</sup> Verizon Wireless notes that arrangements between co-carriers were common prior to the Telecommunications Act of 1996, and the Commission has authorized such arrangements post-Act, such as in the context of interim number portability arrangements.<sup>15</sup> Verizon Wireless advocates "the FCC should clarify that LECs are entitled to provide access service with other carriers" and agrees that "The FCC should not allow IXCs to escape paying access charges because a call is ultimately terminating or originating with a CMRS carrier."<sup>16</sup>

### **III. A RULING FAVORING US LEC NEED NOT BE TIED TO OTHER DISPUTES**

Although some Commenters, notably Sprint and Verizon Wireless, continue to advocate that CMRS carriers be entitled to receive access charges, that issue is being considered separately in the Intercarrier Compensation Proceeding.<sup>17</sup> The US LEC Petition simply seeks reaffirmation that access charges should be paid for CMRS traffic routed via LEC networks. Resolution of this Petition does not require reconsideration of the CMRS access issues that already are being considered separately in the Intercarrier Compensation proceeding.

Similarly, the US LEC Petition does not seek any changes to current access charge policies. Some IXC comments express frustration with the current access charge regime, and the fact that multiple LECs may participate in routing interexchange calls. For example, although AT&T's Comments appear to reflect some nostalgia for the days when all LECs were ILECs,

<sup>14</sup> Comments of Verizon Wireless, filed October 18, 2002, at 11.

<sup>15</sup> *Id.* at 12-13.

<sup>16</sup> *Id.* at 14.

<sup>17</sup> See *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd 9610 (2001)

even it concedes that CLECs should be permitted to charge access fees for providing access services in connection with traffic originating or terminating on a CMRS carrier's network "where the CLEC actually *replaces* the ILEC in performing an access function normally performed by the ILEC."<sup>18</sup> However, AT&T's Comments here appear to advocate eliminating, or at least limiting, the role of CLECs in providing exchange access in most instances related to CMRS. Their Comments seem to chastise CMRS carriers for routing traffic via a CLGC rather than directly through an ILEC tandem "*as was done in the past.*"<sup>19</sup> This apparent reliance on traditional arrangements is not a consistent AT&T position.

For example, in Comments filed in this CC Docket No 01-92 regarding a Sprint Petition for Declaratory Ruling challenging BellSouth on tandem routing issues, AT&T appears to be more sympathetic to CLEC concerns, supporting tandem routing from ILECs "to allow new entrants to interconnect indirectly with other carriers."<sup>20</sup> AT&T explains that denial of such interconnection by ILECs would force CLECs to mirror the incumbent's network, and would forestall widespread local exchange competition."<sup>21</sup>

Just as all IXCs do not always have a point of presence in every LEC's service territory, and must depend on arrangements between LECs to route IXCs calls on an nationwide basis, CLIC networks also may need to connect to other LECs to complete IXC calls.

AT&T defended CLECs and diverse CLEC routing in an earlier phase of this docket, explaining that "Use of the incumbent LEC's local tandem is essential to the CLECs' ability to exchange traffic with smaller LECs (*e.g.*, small independent companies, rural companies,

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<sup>18</sup> Comments of AT&T Corp., filed October 18, 2002, at 3 and 12 (emphasis in the original).

<sup>19</sup> *Id.* at 2, (emphasis supplied).

<sup>20</sup> Comments of AT&T Corp. on Sprint Petition for Declaratory Ruling, filed **August 8, 2002**, at 1

<sup>21</sup> *Id.* at 2.

wireless companies, and other CLECs) where direct interconnection of facilities is impractical.<sup>22</sup>

AT&T clearly is aware that direct connections are not always practical, and that CLECs should be able to interconnect with a variety of carriers to provide competitive access offerings. CLECs must continue to be permitted the flexibility to offer diverse services and routing.

#### **IV. DISPUTED ISSUES NEED NOT BE RESOLVED IN THIS PROCEEDING**

This proceeding is not a complaint proceeding, and the Commission should not be expected to, and does not need to, resolve specific factual disputes in the context of ruling on this request for a declaratory ruling. While Sprint's comments in this proceeding carefully avoid presuming facts not in evidence, stating that "without additional factual information, Sprint cannot comment on specific disputes. . .,"<sup>23</sup> other IXCs have not been as circumspect. Apparently seeking to avoid paying access charges to LECs when CMRS traffic is involved, AT&T and WorldCom offer generalized, but factually unsupported scenarios, along with their speculative but unproven theories about routing and rates.

The Commission has several ongoing policy proceedings where the IXCs can provide specific information, if they possess such information. In addition, carriers always have available the Commission's complaint process. The Commission can consider specific facts about rates and practices in the complaint process. In the absence of specific facts, the Commission should give no weight to the unsupported speculation and conspiracy theories offered by some IXCs.

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<sup>22</sup> *Id.*

<sup>23</sup> Sprint Comments, filed October 18, 2002, at 1



**V. THE COMMISSION SHOULD GRANT THE PETITION EXPEDITIOUSLY**

The cominents filed in this proceeding give the Commission sufficient record to issue a declaratory ruling on a expedited basis reaffirming that all LECs (both ILEC and CLEC) may continue to recover access charges from IXCs for CMRS traffic routed through the LEC to or from an IXC. **As** the Joint Commenters urge both in this Reply and in the initial Comments, a definitive ruling is necessary to remove uncertainty in this matter, to alleviate disputes and to prevent future questions. Therefore, McLeodUSA, Focal and Cavalier respectfully request that this Commission reaffirm that when CMRS traffic is routed through a LEC (CLEC or ILEC) *to* an IXC that access payments are due. **A** declaratory ruling, as requested by US LEC' in the Petition, should he issued expeditiously by this Commission, and should apply to all LECs that carry similar traffic.

Respectfully submitted,



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